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Slums in Madras City

35 *Q.*—SRI S. PAKKIRISWAMY PILLAI : Will the Hon. the Minister for Industries be pleased to state—

(*a*) the names of the slums declared as such in the City of Madras under the provisions of the Madras Slum Improvement (Acquisition of Land) Act, 1954 (Madras Act XI of 1954).

(*b*) the special reasons for declaring only these slums areas ; and

(*c*) the other slums in the city which have not been notified by the Government as slums and the reasons therefor ?

A.—(*a*) *to* (*c*) A statement [a] is placed on the Table of the House.

Advertisements

36 *Q.*—SRI P. G. MANICKAM : கனம் உள் விவகார அமைச்சர் அவர்கள் தயவுசெய்து கீழ்க்கண்ட கேள்விகளுக்குப் பதிலளிப்பாரா—

(அ) 1960-ல் சொந்தக்காரர்கள் அனுமதி பெருமல் பொதுஜனப் பார்வையில் படும் இடங்களில் விளம்பரங்களை ஒட்டுவதைத் தடை செய்வதற்காக இயற்றப்பட்ட சட்டத்தை மீறியவர்கள் எத்தனை பேர்கள் ?

(ஆ) இவர்கள் எத்தனை பேர்களுக்கு—

(i) அபராதம்.

(ii) சிறை தண்டனை

விதிக்கப்பட்டது ?

A.—(அ) 141.

(ஆ) (i) 85.

(ii) Nil.

II. PRIVILEGE MATTERS.

(1) ARREST OF A MEMBER.

An asterisk (*) at the commencement of a speech indicates revision by the member.

MR. SPEAKER : Hon. Members are aware of the matter of privilege raised on 9—8—1960 by the Hon. Sri M. Kalyanasundaram about his arrest on 13th July 1960 under Section 151 Criminal Procedure Code when he was staying in the Legislators' Hostel and preparing for the ensuing session of the Legislature. In this connection I have heard the views of the leaders of parties and the Hon. the Leader of the House on 18th August 1960 and I had reserved my ruling. Today I am giving my ruling.

In all cases of privilege, under rule 188 of the Madras Assembly Rules, I have to decide whether there is a *prima facie* case or not. Before doing so, I have to satisfy myself whether the matter referred to is of recent occurrence and whether it involves a question of privilege. The Hon. Member Sri Kalyanasundaram, was arrested on the 13th July and he gave notice of the alleged

[a] Printed as Appendix V on pages 564-566 infra.

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breach of privilege on the 8th August which is the first day of the present session of the Assembly. I am, therefore, satisfied that it refers to a matter of recent occurrence.

The next thing for me to do is to find out whether the matter involves a question of privilege. The powers and privileges and immunities of Members of the State Legislatures are set out in Article 194 of the Constitution of India. It may be seen from this that till the powers, privileges and immunities are defined by the Legislature itself, they shall be those of the House of Parliament of the United Kingdom. The question, therefore, arises as to what are the privileges and immunities of a Member of Parliament from being arrested. The privileges originated at a time when the British law made a free use of imprisonment in civil proceedings as a method of coercing debtors to pay their debts. Members of Parliament in attendance on the House were considered as engaged upon the King's business, and therefore, not to be hindred in doing so by arrests at the suite of another subject of the King. Criminal acts were regarded as offences against the King, and the privilege therefore, did not apply. From the earliest days, it has been held that privilege is *not* claimed or claimable for any indictable offence. During the early periods there was no clear distinction between "civil" and "criminal". In later years, owing to the growing list of statutory offences and particularly in the case of preventive detention and emergency legislation in times of crisis, there was a debatable region about which a definite view did not and could not be expressed. In May's Parliamentary Practice, page 78, it is stated that—

"A review of the development of the privilege reveals a tendency to confine it more narrowly to cases of a civil character and to exclude not only every kind of criminal case, but also cases which, while not strictly criminal, partake more of a criminal than of a civil character."

The Committee of Privileges of the British Parliament, in its reports of Captain Ramsay's case, (I shall come to Captain Ramsay's case later) has also concluded that "consideration of the general history of the privilege shows that the tendency has been to narrow its scope." As has been put by Mr. Gilbert Campion, during the period of last two hundred years privilege from arrest has not been successfully claimed except in civil cases.

It would, therefore, be seen that the privilege is limited to civil cases and that it has never been allowed to interfere with administration of criminal justice or emergency legislation. What originally was restricted to indictable offence has been widened to include all cases which partake of a criminal character. The question in a particular case does not appear to be whether it is for a criminal offence, but whether it is not of a civil character. If the arrest is with reference to a case which is not of a civil character, the immunity does not extend.

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Summarizing what I have said, freedom from arrest has been defined both as positive and negative. The positive aspect of the privilege is freedom from arrest in all civil actions or suits during the time of Parliament and during the period when a member is journeying to or returning from Parliament. The negative aspect is that it does not apply to treason, felony and breach of peace. As I have said. there is a debatable intermediary region which includes cases of commitment for contempt, the growing list of modern statutory offences and preventive detention by order of an executive authority.

Members of this Legislature, therefore, have the same freedom from arrest, as that of the Members of the House of Commons. This has been reiterated by the Supreme Court in what is known as the 'Searchlight Case'. A Member of this Assembly, therefore, cannot be arrested under civil process and if a Member is arrested under Criminal process or if a Member is arrested under emergency Legislation, the House has to be informed of the causes of arrest.

In the present case, Sri Kalyanasundaram has been arrested under Section 151, Criminal Procedure Code, Sri Kalyanasundaram's contention is that his arrest under this section 151, Criminal Procedure Code, is not for any criminal offence that he has committed. Section 151, Criminal Procedure Code reads as follows :—

"A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented".

The arrest under this section is to prevent a person from committing a cognizable offence. If the person is not arrested, then the offence may be committed. The arrest, therefore, is to prevent a person from committing a cognizable offence. The question is, whether immunity from arrest extends to such a case.

In 1951, the Madras High Court had occasion to go into the question of the nature of preventive detention in the case of Sri P. Venkateswarlu. The presiding Judge (I think it was Justice Govinda Menon) came to the conclusion that preventive detention does not fall within the privilege claim.

There is the well-known case of Captain Ramsay. Captain Ramsay was detained in pursuance of an order by the Home Secretary purporting to act under Regulation 18 (*b*) of the Defence (General) Regulations, 1939. The Speaker referred this matter to the Committee of privileges and they came to the conclusion that there was no breach of privilege. In its report, the Committee has observed that "there is, of course, substantial difference between arrest and subsequent imprisonment on a criminal charge and detention without trial by executive order under this regulation or under an analogous provision in the past. They have,

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however, these in common; the purpose of both is the protection of the community as a whole ". In its conclusion, the Committee says that preventive arrest under statutory authority by executive order is not within the principle of the cases to which the privilege of arrest has been decided to extend. The claim that the privilege extends to such cases would be either the assertion of a new Parliamentary privilege or an unjustified extension of an existing one.

In India, the Lok Sabha had also occasion to go into the question of preventive arrest in the Deshpande case. The Committee of privileges of the Lok Sabha in its report has laid emphasis upon the fundamental principle that " all citizens including the Member of Parliament have to be treated equally in the eyes of Law and unless so specified in the Constitution or in any law, a Member of Parliament cannot claim any higher privileges than those enjoyed by any ordinary citizen in the matter of application of the laws ". The particular case that was before the Committee was one where an arrest had been made under Preventive Detention Act. The Committee came to the conclusion that ' keeping all these facts in mind, the committee thinks that preventive detention is in its essence as much a penal measure as any arrest by the Police Officer under an order of a Magistrate, on suspicion of a commission of a crime or in course of or as a result of the proceedings of the Criminal Procedure Code and no substantial distinction can be drawn on the ground that preventive detention may proceed merely on the suspicion and not on the basis of the commission of an offence on the part of a person directed to be detained. The Committee, therefore, concluded that if preventive arrest under statutory authority by executive order is made, no breach of privilege is involved.

Thus we see that preventive arrest, though a preventive and not a punitive measure, would be of a criminal nature, and there is no breach of privilege when a preventive arrest is made under statutory authority. Arrest under section 151, Criminal Procedure Code is certainly preventive arrest under statutory authority. There is no doubt that judicial decisions on the nature of preventive detention under statutory authority would apply *mutatis mutandis* to the preventive custody under section 151, Criminal Procedure Code. That apart, the mere fact that such an arrest is provided for in the Criminal Procedure Code is sufficient to show that the arrest partakes of a criminal character.

In Om Prakash Gupta's case, where he was arrested under section 151, Criminal Procedure Code, the Madras High Court observed that " the special object of section 151, Criminal Procedure Code is to prevent the commission of an offence which a person designs or intends to commit. The facts are not capable of investigation in order to find out whether in fact a congnizable offence was intended to be committed or not, as the offence was still at the stage of intention and has not passed into the region of facts. There is nothing to indicate that the detention or custody

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of the petitioner is illegal or improper." When private individuals can be arrested under section 151, Criminal Procedure Code, there is nothing to show that a Member of this House cannot be arrested under it.

The Hon. Member Sri M. Kalyanasundaram has also contended that he has been arrested within the immunity period of 40 days. This immunity period applies only for arrests under civil process. As the arrest of Sri M. Kalyanasundaram was not under civil process, there is no immunity period.

Sri Kalyanasundaram's contention that he must be informed of the reasons for his arrest is not correct. The only condition is that the House should be informed of the cause for the arrest and that the Member is detained from service in the House. The House is to be informed through the Speaker, and this has been done in this case. The Commissioner of Police informed me on the 13th July itself of the arrest. The fact of the arrest has also been communicated to the Hon. Members as the House was not sitting at the time. This also does not involve a question of privilege.

I, therefore, rule that there is no *prima facie* case made out in this case.

(2) ALLEGED INCORRECT ANSWER TO A QUESTION.

SRI S. M. ANNAMALAI: Sir, I gave notice of a privilege motion and I want to know what happened to that. 9-30 a.m.

MR. SPEAKER: The hon. Member has raised a question of privilege. I am doubtful whether it would come under privilege. The argument of the hon. Member is that in reply to his starred question No. 479 answered by the Hon. Minister for Works on 20th August 1960, the Minister for Works had stated that the question of sharing of Parambikulam and Cauvery waters was of a confidential nature and that the information could not be furnished at that stage. In respect of Parambikulam and Aliyar, however, the reply stated that the final agreement between Madras and Kerala State was reached at Delhi on 4th July 1960. To a supplementary question from the hon. Member whether a statement in regard to Parambikulam and Aliyar project could be placed on the table of the House, the Minister replied that a statement had already been laid on the table of the House. The contention of the hon. Member is that the reply to the supplementary is contrary to facts, as such a statement had not so far been laid on the table of the House and that therefore this is an incorrect and misleading statement and involved a breach of privilege.

I will explain to the hon. Member the peculiar circumstances under which there was this difference. The questions given notice of on the matter were Question No. 107 on 18th May 1960 and